UNITED STATES PATENT AND TRADEMARK OFFICE

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09/884,674	06/19/2001	Jim Chu	884.441US1	3214

7590 05/19/2005	EXAMINER
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Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

X̸

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 February 2005*.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 3-30* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 3-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

    1.☐ Certified copies of the priority documents have been received.

    2.☐ Certified copies of the priority documents have been received in Application No. _____.

    3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
    application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.
5)☐ Notice of Informal Patent Application (PTO-152)
6)☐ Other: _____.

1. This action is responsive to the amendment and remarks filed on February 17, 2005.

2. Claims 1 and 3-30 are presented for examination and claim 2 is cancelled.

3. The text of those sections of Title 35, U.S. code not included in this office action can be found in a prior office action.

Claim Rejections – 35 USC 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1, 3-16, 18-20 and 25-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Emens et al, U.S. Patent 6,606,643 (hereinafter Emens) in view of Ramanathan et al, U.S. Patent 5,913,041 (hereinafter Ramanathan)

6. As per claim 1, Emens taught the invention substantially as claimed for managing a plurality of sources comprising:

determining an empirical measurement of a performance of each of the plurality of

sources (col. 3, lines 47-58); and

selecting a source in reference to the empirical measurement of the performance of each

of the plurality of sources (col. 3, line 66-col. 4, line 3).

7.   Emens was cited in the last office action.

8.   Emens did not teach that determining including obtaining an empirical measurement of a

throughput speed of each of the plurality of sources from at least one third-party sources.

Ramanathan taught the method comprising determining an empirical measurement of a

throughput speed of each of the plurality of sources from at least one third-party source (e.g.

content server) (col. 3, lines 43-58; col. 5, lines 48-51; col. 6, lines 38-49).

9.   It would have been obvious to one having ordinary skill in the art at the time of the

invention was made to combine the teachings of Emens and Ramanathan because Ramanathan's

teaching of determining an empirical measurement of a throughput speed of each of the plurality

of sources from at least one third-party source would increase the alertness of Emens's system by

allowing throughput monitoring that provides a means for evaluating the performance of the

system and the performance of the connection to individual remote sites (col. 4, lines 64-67).

10.   As per claims 8, 10 and 18, Emens taught the invention substantially as claimed for

managing a plurality of sources, wherein executable instructions capable of directing a processor

to perform:

> determining an empirical measurement of a throughput speed of each of the plurality of
>
> sources (col. 3, lines 47-58); and
>
> selecting a source in reference to the empirical measurement of the throughput speed of
>
> each of the plurality of sources (col. 3, line 66-col. 4, line 3). (Note that the throughput
>
> speed is interpreted as the throughput time (i.e. roundtrip time) as defined according to
>
> the specification, page 17, lines 1-7, if the size of the transmission and response is equal
>
> for each source tested.)

11.   Emens did not teach that determining including obtaining an empirical measurement of a

throughput speed of each of the plurality of sources from at least one third-party sources.

Ramanathan taught the method comprising determining an empirical measurement of a

throughput speed of each of the plurality of sources from at least one third-party source (e.g.

content server) (col. 3, lines 43-58; col. 5, lines 48-51; col. 6, lines 38-49).

12.   It would have been obvious to one having ordinary skill in the art at the time of the

invention was made to combine the teachings of Emens and Ramanathan because Ramanathan's

teaching of determining an empirical measurement of a throughput speed of each of the plurality

of sources from at least one third-party source would increase the alertness of Emens's system by

allowing throughput monitoring that provides a means for evaluating the performance of the

system and the performance of the connection to individual remote sites (col. 4, lines 64-67).

13.   As per claim 12, Emens taught the invention substantially as claimed for managing a

plurality of sources which, when executed by a processor, cause the processor to perform the

method of:

>   determining an empirical measurement of a download speed of each of the plurality of

>   sources (col. 3, lines 27-58); and

>   selecting a source in reference to the empirical measurement of the download speed of

each of the plurality of sources (col. 3, line 66-col. 4, line 3). Note that the download speed

could be the throughput speed (i.e. or could be the throughput time if the size of the transmission

and response is equal for each source tested according to the specification on page 17, lines 1-7)

according to the specification, page 13, lines 1-4.

14.   Emens did not teach that determining including obtaining an empirical measurement of a

download speed of each of the plurality of sources from at least one third-party sources.

Ramanathan taught the method comprising determining an empirical measurement of a

download speed of each of the plurality of sources from at least one third-party source (e.g.

content server) (col. 3, lines 43-58; col. 5, lines 48-51; col. 6, lines 38-49).

15.   It would have been obvious to one having ordinary skill in the art at the time of the

invention was made to combine the teachings of Emens and Ramanathan because Ramanathan's

teaching of determining an empirical measurement of a download speed of each of the plurality

of sources from at least one third-party source would increase the alertness of Emens's system by

allowing throughput monitoring that provides a means for evaluating the performance of the

system and the performance of the connection to individual remote sites (col. 4, lines 64-67).

16.   As per claim 25, Emens taught the invention substantially as claimed for managing

sources in a peer-to-peer network (i.e. data can be exchange freely between two computer) (col.

4, lines 19-22) comprising:

>   a processor (inherently comprised); and

>   software means operative on the processor for determining an empirical measurement of

>   a throughput speed of each of the plurality of sources (col. 3, lines 47-58; col. 3, line 66-

>   col. 4, line 3); and

>   the software means selecting a source in reference to the empirical measurements of the

>   ·throughput speed of each of the plurality of sources (col. 3, lines 47-58; col. 3, line 66-

>   col. 4, line 3).

17.   Emens did not teach the software means including obtainer means to obtain an empirical

measurement of a throughput speed of each of the plurality of sources from at least one third-

party source. Ramanathan taught the system comprising software means including obtainer

means to obtain an empirical measurement of a throughput speed of each of the plurality of

sources from at least one third-party source (e.g. content server) (col. 3, lines 43-58; col. 5, lines

48-51; col. 6, lines 38-49).

18.   It would have been obvious to one having ordinary skill in the art at the time of the

invention was made to combine the teachings of Emens and Ramanathan because Ramanathan's

teaching of obtaining an empirical measurement of a throughput speed of each of the plurality of

sources from at least one third-party source would increase the alertness of Emens's system by

allowing throughput monitoring that provides a means for evaluating the performance of the

system and the performance of the connection to individual remote sites (col. 4, lines 64-67).

19.   As per claim 28, Emens taught the invention substantially as claimed comprising:

        a determiner (e.g. the calibration applets) of an empirical measurement of a throughput

        speed of each of the plurality of download peer-to-peer network sources (i.e. data can be

        exchange freely between two computer) (col. 4, lines 19-22; col. 7, lines 44-54); and

        a selector (e.g. the calibration manager) of a source in reference to the empirical

        measurement of the throughput speed of each of the plurality of peer-to-peer network

        sources (col. 7, lines 44-54).

20.   Emens did not teach that determining including obtaining an empirical measurement of a

throughput speed of each of the plurality of sources from at least one third-party sources.

Ramanathan taught the method comprising determining an empirical measurement of a

throughput speed of each of the plurality of sources from at least one third-party source (e.g.

content server) (col. 3, lines 43-58; col. 5, lines 48-51; col. 6, lines 38-49).

21.   It would have been obvious to one having ordinary skill in the art at the time of the

invention was made to combine the teachings of Emens and Ramanathan because Ramanathan's

teaching of determining an empirical measurement of a throughput speed of each of the plurality

of sources from at least one third-party source would increase the alertness of Emens's system by

allowing throughput monitoring that provides a means for evaluating the performance of the

system and the performance of the connection to individual remote sites (col. 4, lines 64-67).

22.   As per claim 3, Emens and Ramanathan taught the invention substantially as claimed in

claim 1 above. Ramanathan further taught obtaining an empirical measurement of a throughput

speed of each of the plurality of sources from a local source (col. 3, lines 43-58; col. 6, lines 38-

49). (Note that the throughput speed is interpreted as the throughput time (i.e. roundtrip time) as

defined according to the specification, page 17, lines 1-7, if the size of the transmission and

response is equal for each source tested.)

23.   As per claim 4, Emens and Ramanathan taught the invention substantially as claimed in

claim 1 above. Ramanathan further taught that the performance includes throughput speed (col.

3, lines 43-58; col. 5, lines 48-51; col. 6, lines 38-49).

24.   It would have been obvious to one having ordinary skill in the art at the time of the

invention was made to combine the teachings of Emens and Ramanathan because Ramanathan's

method of obtaining the throughput speed would increase the accuracy of Emens's system by

providing a measure rate at which data is transferred between server system and a remote

personal computer of a subscriber (col. 1, lines 60-65).

25.   As per claims 5, 14 and 27, Emens and Ramanathan taught the invention substantially as

claimed in claims 1, 12 and 25 above. Emens further taught wherein the performance comprises

latency (col. 3, lines 55-56).

26.   As per claim 6, Emens and Ramanathan taught the invention substantially as claimed in

claim 5 above. Emens further taught wherein the determining the empirical measurement further

comprises:

measuring the elapsed time of a transmission involving each of the plurality of sources (col. 3,

lines 56-58).

27.   As per claims 7, 11, 13 and 20, Emens and Ramanathan taught the invention substantially

as claimed in claims 5, 10, 12 and 18 above. Emens and Ramanathan further taught wherein the

determining the empirical measurement further comprises for each of the plurality of sources:

        recording transmission time from the current time and date (see Ramanathan, col. 5, lines

        52-62);

        initiating a transmission to a download source of the plurality of sources (see Emens, col.

        3, lines 49-51);

        receiving a response to the transmission from the source (see Emens, col. 3, lines 51-53);

recording the receipt time from the current date and time (see Ramanathan, col. 5, lines 52-62); and

determining the throughput speed of the source from the difference between the receipt time and the transmission time (see Emens, col. 3, lines 56-58; col. 5, lines 42-49).

28.   As per claim 9, Emens did not teach comprising a download speed. Ramanathan taught wherein the throughput speed further comprises a download speed (col. 2, lines 9-13).

29.   It would have been obvious to one having ordinary skill in the art at the time of the invention was made to combine the teachings of Emens and Ramanathan because Ramanathan's method of obtaining the throughput speed would increase the accuracy of Emens's system by providing a measure rate at which data is transferred between server system and a remote personal computer of a subscriber (col. 1, lines 60-65).

30.   As per claim 15, Emens taught the invention substantially as claimed for managing a plurality of sources comprising:

storing transmission time from the current time (col. 5, lines 42-45);

initiating a transmission to a download source of the plurality of sources (col. 3, lines 45-51);

receiving a response to the transmission from the source (col. 3, lines 51-53);

storing the receipt time from the current time (col. 5, lines 42-45);

determining the latency of the source from the difference between the receipt

time and the transmission time (col. 3, lines 56-58; col. 5, lines 42-49); and

selecting a source in reference to the latency speed of each of the plurality of sources

(col. 3, line 66-col. 4, line 3).

31.   Emens did not teach including a date with the transmission time or the receipt time.

Ramanathan taught the method of recording the time and date (col. 5, lines 52-62).

32.   It would have been obvious to one having ordinary skill in the art at the time of the

invention was made to combine the teachings of Emens and Ramanathan because Ramanathan's

teaching of recording the transmission date and receipt date would increase the alertness of

Emens's system by allowing a user to monitor the transaction with the external network.

33.   As per claims 16 and 19, Emens and Ramanathan taught the invention substantially as

claimed in claims 15 and 18 above. Emens further taught wherein source further comprises a

source in a peer-to-peer network (i.e. data can be exchange freely between two computer) (col. 4,

lines 19-22).

34.   As per claim 26 Emens and Ramanathan taught the invention substantially as claimed in

claim 25 above. Emens further taught wherein the throughput speed further comprises a round-

trip time (col. 5, lines 48-49).

35.   As per claim 29, Emens and Ramanathan taught the invention substantially as claimed in

claim 28 above. Emens further taught comprising:

        a transmitter (e.g. the calibration applets) to transmit a message to a download source of

        the plurality of sources (col. 3, lines 49-51);

        a recorder (e.g. timer) of the time of a transmission of a message, operably coupled to the

        transmitter (col. 5, lines 42-45);

        a receiver of a response to the transmission from the source, operably coupled to the

        transmitter (col. 3, lines 51-53);

        a recorder (e.g. timer) of the time of receipt of a response (col. 5, lines 42-45); and

a determiner (e.g. the calibration manager) of the throughput speed of the source, from the

difference between the receipt time and the transmission time (col. 3, lines 56-58; col. 5, lines

42-49).

36.   Claims 17, 21-24 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Emens and Ramanathan in view of Andrews et al, U.S. Patent Application Publication

2002/0038360 (hereinafter Andrews).

37.   Andrews was cited in the last office action.

38.   As per claim 17, Emens and Ramanathan taught the invention substantially as claimed in

claim 15 above. Emens and Ramanathan did not specifically detailing the establishment of the

socket connection comprising a TCP/IP synchronized idle message and a TCP/IP

acknowledgment message. Andrews taught wherein the transmission further comprises a

TCP/IP synchronized idle message (page 4, paragraph 47); and the response further comprises a

TCP/IP acknowledgment message (page 4, paragraph 47).

39.   It would have been obvious to one having ordinary skill in the art at the time of the

invention was made to combine the teachings of Emens, Ramanathan and Andrews because

Andrews's method of comprising a TCP/IP synchronized idle message and a TCP/IP

acknowledgment message would increase the capability of Emens's and Ramanathan's systems

by allowing establishment of a socket connection for accessing content on the server.

40.   As per claim 21, Emens taught the invention substantially as claimed for managing a

plurality of sources comprising:

> obtaining a list comprising a plurality of identification of sources (col. 3, lines 38-46);
>
> initiating a plurality of connections, the plurality of connections further comprising one
>
> connection for each of the plurality of sources, yielding a plurality of initiated
>
> connections (col. 3, lines 48-51);
>
> receiving a response for the each of the plurality of initiated connections, yielding a
>
> plurality of responses (col. 3, lines 51-53); and
>
> selecting the fastest source of the plurality of sources in reference to a
>
> predetermined file size and in reference to the response (col. 3, line 66-col. 4, line 3).

(Note: It is inherent that the HTTP request must be in reference to a predetermined file size)

41.   Emens did not teach obtaining an empirical measurement of a throughput speed of each

of the plurality of sources from at least one third-party sources. Ramanathan taught the method

comprising obtaining an empirical measurement of a throughput speed of each of the plurality of

sources from at least one third-party source (e.g. content server) (col. 3, lines 43-58; col. 5, lines

48-51; col. 6, lines 38-49).

42.   It would have been obvious to one having ordinary skill in the art at the time of the

invention was made to combine the teachings of Emens and Ramanathan because Ramanathan's

teaching of determining an empirical measurement of a throughput speed of each of the plurality

of sources from at least one third-party source would increase the alertness of Emens's system by

allowing throughput monitoring that provides a means for evaluating the performance of the

system and the performance of the connection to individual remote sites (col. 4, lines 64-67).

43.   Emens and Ramanathan did not teach socket connections. Andrews taught socket

connections (i.e. three way handshake) could be measured for client accessing a content server

(page 4, paragraphs 46 and 47). Note that it is inherent that a three-way handshake is to establish

socket connection between a client and a server. The three-way handshake includes initiating a

socket connection by using a synchronization (SYN message) and receiving a response (ACK

message) for the initiated socket connection.

44.   It would have been obvious to one having ordinary skill in the art at the time of the

invention was made to combine the teachings of Emens, Ramanathan and Andrews because

Andrews's method of measuring the socket connections would increase the efficiency of

Emens's and Ramanathan's systems by locating content servers in response to the minimal round

trip time (page 1, paragraph 8).

45.   As per claim 22, Emens, Ramanathan and Andrews taught the invention substantially as

claimed in claim 21 above. Emens further taught wherein the selecting further comprises:

      selecting the source associated with the response that is received first (col. 3, lines 47-58;

col. 3, line 66-col. 4, line 6).

46.   As per claim 23, Emens, Ramanathan and Andrews taught the invention substantially as

claimed in claim 21 above. Emens further taught wherein the selecting further comprises:

      measuring the latency of each of the plurality of sources (col. 3, lines 47-58); and

      selecting a source in reference to the download speed of each of the plurality of sources

      (col. 3, line 66-col. 4, line 6).

47.   As per claim 24, Emens taught the invention substantially as claimed wherein measuring

the latency further comprises:

      storing the time of each of the plurality of initiating connection (col. 5, lines 42-45);

      storing the time of each of the plurality of responses (col. 5, lines 42-45); and

      determining the download speed of each of the plurality of sources from the differences

in time between the time of each of the plurality of the responses and the time of each of the

plurality of the initiating connections (col. 3, lines 56-58; col. 5, lines 42-49). Note that the

download speed could be the throughput speed (i.e. or could be the throughput time if the size of

the transmission and response is equal for each source tested according to the specification on

page 17, lines 1-7) according to the specification, page 13, lines 1-4.

48.   Emens did not teach including a date with the transmission time or the receipt time.

Ramanathan taught the method of recording the time and date (col. 5, lines 52-62).

49.   It would have been obvious to one having ordinary skill in the art at the time of the

invention was made to combine the teachings of Emens and Ramanathan because Ramanathan's

teaching of recording the transmission date and receipt date would increase the alertness of

Emens's system by allowing a user to monitor the transaction with the external network.

50.   Emens and Ramanathan did not teach socket connections. Andrews taught socket

connections (i.e. three way handshake) could be measured for client accessing a content server

(page 4, paragraphs 46 and 47).

51.   It would have been obvious to one having ordinary skill in the art at the time of the

invention was made to combine the teachings of Emens, Ramanathan and Andrews because

Andrews's method of measuring the socket connections would increase the efficiency of

Emens's and Ramanathan's systems by locating content servers in response to the minimal round

trip time (page 1, paragraph 8).

52.   As per claim 30, Emens and Ramanathan taught the invention substantially as claimed in

claim 28 above. Emens and Ramanathan did not specifically detailing the establishment of the

socket connection comprising a TCP/IP synchronized idle message and a TCP/IP

acknowledgment message. Andrews taught wherein the transmission further comprises a

TCP/IP synchronized idle message (page 4, paragraph 47); and the response further comprises a

TCP/IP acknowledgment message (page 4, paragraph 47).

53.   It would have been obvious to one having ordinary skill in the art at the time of the

invention was made to combine the teachings of Emens, Ramanathan and Andrews because

Andrews's method of comprising a TCP/IP synchronized idle message and a TCP/IP

acknowledgment message would increase the capability of Emens's and Ramanathan's systems

by allowing establishment of a socket connection for accessing content on the server.

54.   Applicant's arguments with respect to claims 1 and 3-30, filed 2/17/05, have been fully

considered but are not deemed to be persuasive and are moot in view of new ground of rejection.

55.   In the remark applicant argued that

        (1)   Emens does not teach obtaining information from third-party sources.

        (2)   a reference supporting the "Official Notice" should be provided.

        (3)   Emens does not disclose storing the time of transmission.

        (4)   Emens does not disclose the initiating a download.

        (5)   Emens fails to disclose storing the receipt time of the response.

(6)   Andrews does not disclose "socket connections"

56.   In response to points (1) and (2), Emens did not teach that determining including

obtaining an empirical measurement of a throughput speed of each of the plurality of sources

from at least one third-party sources. Ramanathan taught the method comprising determining an

empirical measurement of a throughput speed of each of the plurality of sources from at least one

third-party source (e.g. content server) (col. 3, lines 43-58; col. 5, lines 48-51; col. 6, lines 38-49)

(i.e., the content server is consider as a third-party source for determining empirical measurement

of a throughput speed because the content server is one of the each of the plurality of sources

wherein the determination of empirical measurement is performed as interpreted in claim 1).

Ramanathan taught the method for supporting the concept of the determining including obtaining

an empirical measurement of a throughput speed of each of the plurality of sources from at least

one third-party source is known and accepted in the art and supporting the official notice taken in

the last office action.

57.   In response to points (3) and (5), Emens taught starting a timer when a request is sent and

stopping a timer upon receipt of a response to determine the round trip time (col. 5, lines 40-49).

Furthermore, Emens taught reporting the elapsed round trip time from the timers (col. 5, lines

40-49). It is inherent that the timer must stored the time of transmission and the receipt time in

order to calculated the round trip time.

58.   In response to point (4), In response to applicant's argument that the references fail to

show certain features of applicant's invention, it is noted that the features upon which applicant

relies (i.e., initiating a download) are not recited in the rejected claim(s). Although the claims

are interpreted in light of the specification, limitations from the specification are not read into the

claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Emens taught

the limitation of applicants claims "initiating a transmission to a download source of the plurality

of sources (col. 3, lines 49-51) (i.e., initiating a download and initiating a transmission to a

download source of the plurality of sources are different).

59.   In response to point (6), Andrews taught socket connections (i.e., three-way handshake)

could be measured for a client accessing a content server (page 4, paragraphs 46-47). It is

inherent that a three-way handshake is to establish socket connection between a client and a

server. The three-way handshake includes initiating a socket connection by using a

synchronization (SYN message) and receiving a response (ACK message) for the initiated socket

connection. Applicant is refer to Bakshi, U.S. Patent 6,457,054, for the method of three-way

handshake to establish socket connection (col. 2, line 52-col. 3, line 14).

60.   The prior art made of record and not relied upon is considered pertinent to applicant's

disclosure.

       Rune, U.S. Patent 6304913, disclosed a method for selecting a closest server from a

plurality of alternative servers.

Curley et al, U.S. Patent Application Publication 2002/0120727, disclosed a method of

providing measurement such as round-trip time between a client and a server.

Chaudhri et al, U.S. Patent Application Publication 2002/0116444, disclosed a method of

selecting a source based on the response time measurements.

61.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

62. ˙   A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR

1.136(a) will be calculated from the mailing date of the advisory action. In no event, however,

will the statutory period for reply expire later than SIX MONTHS from the mailing date of this

final action. Any inquiry concerning this communication or earlier communications form the

examiner should be directed to Philip Lee whose telephone number is (571) 272-3967. Any

inquiry of a general nature or relating to the status of this application should be directed to the

Group receptionist whose telephone number is (703) 305-9600.

JOHN FOLLANSBEE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100